

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

77

5001

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X

In re	:
W. T. GRANT COMPANY,	:
Bankrupt,	:
LIEBMAN, EULAU, ROBINSON & PERLMAN,	:
Appellant,	:
-against-	:
CHARLES G. RODMAN, as Trustee of the	:
Estate of W. T. Grant Company, Bankrupt,	:
Appellee.	:

-----X

B
PLS
Docket No.
77-5001

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF NEW
YORK

BRIEF FOR THE APPELLEE-TRUSTEE

WEIL, GOTSHAL & MANGES
Attorneys for the Trustee
767 Fifth Avenue
New York, New York 10022
(212) 758-7800

Of Counsel:
Harvey R. Miller
William J. Rochelle, III

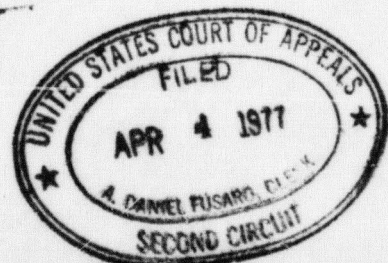


TABLE OF CONTENTS

	Page
Issue Presented	1
Preliminary Statement	2
The Facts	3
A. The W. T. Grant Bankruptcy and the Retention of Liebman Eulau	3
B. Proceedings in the Bankruptcy Court	6
C. Appeal to the District Court	7
ARGUMENT:	
THE ATTORNEYS' FEE AWARDED TO LIEBMAN EULAU REPRESENTED THE FAIR AND REASON- ABLE VALUE OF THE SERVICES RENDERED BY THEM	8
A. The Assertion of an Attorneys' Retaining or Charging Lien by Liebman Eulau is Irre- levant to the Consideration of the Fair and Reasonable Value of the Professional Services Rendered by that Law Firm	8
B. The Standards to be Applied in Determin- ing Compensation for Professional Services Rendered in Relation to Bankruptcy Cases	11
C. The Applicable Principles of Appellate Review Mandate that the Award of Attorneys' Fees not be Disturbed	13
Conclusion	15

TABLE OF AUTHORITIES

Cases:	Page
Bass v. Quittner, Stutman & Treister, 381 F.2d 54 (9th Cir. 1967)	12

	Page
Charles Ray Glass, Inc., In re, 47 F. Supp. 428 (S.D. Cal. 1942)	12
Dunhill Suspender & Belt Corp., In re, 162 F. Supp. 608 (S.D.N.Y. 1958)	13
Farrington Manufacturing Co., In re, 540 F.2d 653 (4th Cir. 1976)	12, 14
Finn v. Childs Co., 181 F.2d 431 (2d Cir. 1950) . . .	12
First Colonial Corp. of America, In re, 544 F.2d 1291 (5th Cir. 1977)	13, 14
Howat, In re, 278 F.2d 582 (7th Cir.), <u>cert.</u> <u>denied</u> , 364 U.S. 887 (1960)	13
Hudson & Manhattan Railroad Co., In re, 339 F.2d 114 (2d Cir. 1964)	12
James Anthony & Co., In re, 531 F.2d 658 (2d Cir. 1976)	13, 14
Land Investors, Inc., In re, 544 F.2d 925 (7th Cir. 1976)	9, 10, 11
Wabson Lumber Co., In re, 394 F.2d 23 (2d Cir. 1968)	12
Official Creditors' Committee of Fox Markets, Inc. v. Ely, 337 F.2d 461 (9th Cir. 1964), <u>cert. denied</u> , 380 U.S. 978 (1965)	6
SEC v. Capital Counsellors, Inc., 512 F.2d 654 (2d Cir. 1975)	14
SEC v. First Securities Co. of Chicago, 528 F.2d 449 (7th Cir. 1976)	14
Valentine, In re, 139 F. Supp. 576 (D. Md. 1956) . .	13
Wal-Feld Co., In re, 345 F.2d 676, 677 (2d Cir. 1965)	13
Watkins v. Sedberry, 261 U.S. 571 (1923)	6
York International Building, Inc., In re, 527 F.2d 1061 (9th Cir. 1975)	14

	Page
Statutes and Rules:	
Bankruptcy Act	
322 (11 U.S.C. §722)	3
Rules of Bankruptcy Procedure	
219, 411 U.S. 1038 (1973)	6, 11
915, 411 U.S. 1098 (1973)	10
11-6, 415 U.S. 1012 (1974)	3
11-27, 415 U.S. 1021 (1974)	3
Other	
18 U.S.C. §155	6

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x

In re	:	
W. T. GRANT COMPANY,	:	
Bankrupt,	:	Docket No. 77-5001
LIEBMAN, EULAU, ROBINSON & PERLMAN,	:	
Appellant,	:	
-against-	:	
CHARLES G. RODMAN, as Trustee of the	:	
Estate of W. T. Grant Company,	:	
Bankrupt,	:	
Appellee.	:	

-----x

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF TRUSTEE-APPELLEE

Issue Presented

The appeal at bar, reduced to its essentials,
presents one question to be considered by the Court:

Does the award of attorneys' fees to
Liebman, Eulau, Robinson & Perlman ("Liebman
Eulau"), by the Bankruptcy Court at a mixed

rate* of \$65.88 per hour, as affirmed by the United States District Court for the Southern District of New York ("District Court"), when compared to the attorneys' request for \$80 per hour, constitute a gross inequity, erroneous application of law or abuse of discretion?

Preliminary Statement

Liebman Eulau appeal from an order of the District Court dated November 26, 1976 granting reargument of an order of that Court dated October 12, 1976, which affirmed an order of the Bankruptcy Court granting attorneys' fees and reimbursement of expenses to Liebman Eulau in the amount of \$51,621.70. The District Court, while granting reargument, adhered to its original determination that the award of attorneys' fees and reimbursement of expenses to Liebman Eulau did not constitute an abuse of discretion by the Bankruptcy Court. The District Court also held that although "the Bankruptcy Judge allowed less than the full amount of fees requested by [Liebman Eulau, that law firm] will have received a more than generous percentage of the fees claimed to have been earned." Liebman Eulau had requested that the Bankruptcy Court allow a fee in the aggregate amount of \$60,739.55. The Bankruptcy Court allowed a fee of \$50,000. Consequently, the amount in controversy is

* The mixed rate represents the average hourly charge irrespective of the attorney who rendered the services and the status of that attorney in terms of partnership, experience and qualifications.

less than \$11,000. The orders appealed from and the action of the Bankruptcy Court did not result in any "gross inequity" to Liebman Eulau or constitute an abuse of discretion or erroneous application of law. Therefore, the orders appealed from should be affirmed in all respects.

This brief is submitted on behalf of Charles G. Rodman, as Trustee of the Estate of W. T. Grant Company, Bankrupt, in support of the orders of the District Court and in opposition to the instant appeal.

Facts

A. The W. T. Grant Bankruptcy and
the Retention of Liebman Eulau

On October 2, 1975, W. T. Grant Company ("Grant") filed a petition for an arrangement under Chapter XI, Section 322 of the Bankruptcy Act, 11 U.S.C. §722, and Chapter XI Rule 11-6, 415 U.S. 1012 (1974). Subsequently, and by order dated April 13, 1976, Grant was adjudged a bankrupt under the Bankruptcy Act (A84).*

Prior to the date of adjudication, Charles G. Rodman was elected as standby trustee in accordance with Chapter XI Rule 11-27, 415 U.S. 1021 (1974). On April 13, 1976, Mr. Rodman qualified as the trustee in bankruptcy and has since acted in that capacity (A84).

* Numbers in parenthesis preceded by "A" refer to pages of the Joint Appendix.

During 1975, and prior to the commencement of the Chapter XI case, Grant engaged Liebman Eulau to prosecute claims against certain former employees based upon alleged breaches of fiduciary responsibilities in relation to real estate operations of Grant. Liebman Eulau commenced an action in connection with that engagement in the United States District Court for the Southern District of New York entitled, W. T. Grant Company v. John A. Christensen, et al. (75 Civ. 471) and filed a proof of claim with Grant's fidelity insurer (A84-5; 88-9).

Prior to October 2, 1975, the filing date of the Chapter XI petition, a compromise and settlement of the Christensen action was effected. In accordance with that settlement, \$75,000 was immediately paid to Grant and an additional \$75,000 was to be paid at a later date. In connection with the firm's work in the Christensen action, Grant paid the sum of \$25,000 to Liebman Eulau as a partial payment for professional services rendered (A24-6). The second installment payment of \$75,000 was received by Liebman Eulau subsequent to the filing of the Chapter XI petition by Grant. The check representing the second installment payment was endorsed by Liebman Eulau and Grant, as a debtor-in-possession, and the moneys represented by that check were deposited into and remain in the special account of Liebman Eulau (A44-5).

After the filing of the Chapter XI petition, the Bankruptcy Court entered an order dated November 14, 1975, authorizing Grant to retain and employ Liebman Eulau as attorneys, under a special retainer, retroactive to October 2, 1975 (A-11).

Herbert Robinson, Esq., a member of Liebman Eulau, filed an affidavit in connection with Grant's application for authority to employ his firm. In paragraph 11 of that affidavit, Mr. Robinson stated:

"My firm would agree to continue this litigation on the basis of an initial retainer of \$10,000 for services commencing November 6, 1975. When the time charges incurred by our firm exceed said \$10,000 retainer, we are to be compensated in accordance with our prevailing time charges in effect at the time such services are rendered." (A20;92).

The order authorizing the employment of Liebman Eulau states, inter alia:

"ORDERED, that a retainer for legal services and out-of-pocket expenses in the amount of \$10,000 be paid to Liebman, Eulau, Robinson & Perlman, Esqs., forthwith and that compensation of said firm for legal services rendered shall be hereafter fixed by this Court upon proper application being made therefor and after deducting the aforesaid \$10,000 retainer.

By signing this order, the Court is not bound by the language of ¶11, p. 4 of the Herbert Robinson affidavit and is free to fix compensation that it finds to be fair and reasonable." [emphasis added] (A12).

Liebman Eulau did not appeal from the order of November 14, 1975. That order explicitly established the

conditions under which Liebman Eulau would be compensated for services rendered to Grant as a debtor-in-possession.

Subsequent to Grant's adjudication as a bankrupt, the Trustee in Bankruptcy was authorized to engage Liebman Eulau by order dated June 28, 1976 (A82). The order of June 28, 1976, is essentially identical to the order of November 14, 1975, and contains a provision identical to that quoted above reserving the Bankruptcy Court's right to determine the reasonable value of the professional services rendered by Liebman Eulau (A83).^{*} No appeal was taken from that order. Liebman Eulau has rendered services pursuant to each of the aforesaid orders.

B. Proceedings in the Bankruptcy Court

After receiving the second \$75,000 installment payment, Liebman Eulau made an application to the Bankruptcy Court dated March 23, 1976, for authority to pay to itself, out of the second installment, an attorney's fee of \$35,739.55 plus disbursements (A24ff). Liebman Eulau claimed that the requested fee plus the \$25,000 previously paid, or a total of \$60,739.55, represented the amount earned by them in compromising and

^{*} This is in conformity with mandatory principles established in bankruptcy jurisprudence that a trustee may not contract to pay legal fees at a specified rate. All charges for legal services must be determined by the bankruptcy court upon application. Watkins v. Sedberry, 261 U.S. 571 (1923); Official Creditors' Committee of Fox Markets, Inc. v. Ely, 337 F.2d 461 (9th Cir. 1964), cert. denied, 380 U.S. 978 (1965); Bankruptcy Rule 219, 411 U.S. 1038 (1973); 18 U.S.C. §155, "Fee Arrangements in Bankruptcy Proceedings."

settling the Christensen action (A24-5). Liebman Eulau's application was heard before the Bankruptcy Court on April 2, 1976 (A37ff).

Thereafter, the Bankruptcy Court rendered a memorandum opinion and order dated May 13, 1976, granting an aggregate attorneys' fee of \$50,000 plus reimbursement of disbursements (A78-9). The Bankruptcy Court stated, in part:

"Calculation of the hours spent and the amounts requested as set forth in the petition before this court indicate a mixed hourly rate of approximately \$80.00. It is unusual under the circumstances that the services of six associates, a paralegal, and one outside counsel could be efficiently used without some danger of duplication of services particularly in light of the substantial time contributed by two partners of the firm. In this regard, I am guided by the criteria traditionally used in evaluating and fixing fees, including the benefit derived by the estate and the complexity of the problems involved and the universally accepted principle of economy in the administration of bankruptcy cases. In re Eureka Upholstery Co. 1931, 2 Cir., 48 F.2d 95, 96; In re Hudson & Manhattan R.R. 339 F.2d 114, 2 Cir. 1964. Nazareth Fair Grounds and Farmers Market, Inc. 374 F.2d 598, 2 Cir. 1967 and Matter of Jack Borgenicht C.A. 2d, 470 F.2d 283 (1972)." (A78-9).

By letter dated May 19, 1976, Liebman Eulau requested that the Bankruptcy Court reconsidered its order of May 13, 1976 (A80-1). The order of May 13, 1976 was not modified or amended and Liebman Eulau appealed to the District Court.

C. Appeal to the District Court

After hearing and by order dated October 12, 1976,

District Judge Kevin T. Duffy affirmed the order of the Bankruptcy Court (A94). The District Court stated:

"The Bankruptcy Judge may have been overly generous but his award was not an abuse of discretion. The appeal is dismissed as frivolous." (A94)

Thereafter, and on October 22, 1976, Liebman Eulau moved for reargument in the District Court. By order dated November 26, 1976, District Judge Duffy granted the motion for reargument and then adhered to his prior determination (A95). The District Court stated:

"The motion to reargue is granted. On reconsideration I adhere to my original determination that the Bankruptcy Judge has not abused his discretion. Although the Bankruptcy Judge allowed less than the full amount of fees requested by appellant, appellant will have received a more than generous percentage of the fees claimed to have been earned.

"On reargument, appellant's motion is denied." (A95).

ARGUMENT

THE ATTORNEYS' FEE AWARDED TO LIEBMAN EULAU REPRESENTED THE FAIR AND REASONABLE VALUE OF THE SERVICES RENDERED BY THEM

- A. The Assertion of an Attorneys' Retaining or Charging Lien by Liebman Eulau is Irrelevant to the Consideration of the Fair and Reasonable Value of the Professional Services Rendered by that Law Firm

The arguments propounded by Liebman Eulau rely heavily upon the assertion of a retaining or charging lien against the \$75,000 received subsequent to the filing of the Chapter XI petition by Grant. Liebman Eulau apparently contend that the assertion of a lien mandates payment of

attorneys' fees in the full amount requested by the lien claimant. This contention is erroneous and contrary to the applicable law. The orders authorizing the retention of Liebman Eulau, dated November 14, 1975 and June 28, 1976, specifically provided "that compensation of [Liebman Eulau] for legal services rendered shall be hereafter fixed by this Court upon proper application***." (A12;83).

Further, the existence or non-existence of a charging or retaining lien is immaterial inasmuch as the court must determine the value of the lien, i.e., the value of the services rendered by the attorneys claiming to possess the lien. Thus, in In re Land Investors, Inc., 544 F.2d 925 (7th Cir. 1976) the court stated in a somewhat analogous situation that "the sole question presented is whether the extent of the lien was correctly assessed below." 544 F.2d at 932.

The Court of Appeals for the Seventh Circuit held:

"[The attorneys] ask us to hold that the bankruptcy court did not have the authority to determine the extent of their lien on a 'reasonable fee' basis. To the extent this is merely a suggestion that the intervention of bankruptcy did not vitiate their lien, we need not quarrel with them. The order appealed from recognizes and preserves that lien. However, to the degree appellants suggest that the bankruptcy court could not determine the extent of the lien, we must disagree. Our holding that the bankruptcy court had summary jurisdiction of the judgment proceeds necessarily in this case includes the corollary that it could determine the validity and extent of encumbrances thereto. See Sanders v. Providence

Washington Insurance Co., 442 F.2d 1317 (8th Cir. 1971); Jackson v. Vance, 179 F.2d 154 (10th Cir. 1949), cert. denied, 339 U.S. 937 (1950).

* * *

Having decided that the bankruptcy court had summary jurisdiction* over the judgment proceeds and the authority to determine the extent of appellants' lien on a reasonable fee basis, we have little difficulty affirming the courts below on the substance of a turnover order. Rule 810 of the Rules of Bankruptcy Procedure provides that on review of a bankruptcy court's decision by the district court, the court 'shall accept the referee's findings of fact unless they are clearly erroneous, and shall give due regard to the opportunity of the referee to judge the credibility of the witnesses.' Nor are we free, on review of the district court's review, to adopt a more rigorous standard for assessing the facts determined below." 544 F.2d at 932-3.

The procedure utilized in the Land Investors case was employed in the case at bar. Solely for the purposes of this appeal, the Trustee assumes, as was done in Land Investors, that Liebman Eulau possesses a charging or retaining lien. Nevertheless, the determination of the fair and reasonable value of the services rendered by Liebman Eulau may not be set aside unless that determination resulted in a gross inequity, abuse of discretion or erroneous application of law. In the

* Here, there is no issue as to summary jurisdiction over Liebman Eulau. They voluntarily submitted to the Bankruptcy Court's jurisdiction by making the fee application. Bankruptcy Rule 915, 411 U.S. 1098 (1973).

perspective of the services rendered and the compensation granted, it cannot be said that an allowance of \$50,000, or more than 20% of the total recovery, constituted a gross inequity or an abuse of discretion or an erroneous application of existing law.

B. The Standards to be Applied in Determining Compensation for Professional Services Rendered in Relation to Bankruptcy Cases

Bankruptcy Rule 219, 411 U.S. 1038 (1973), lists the considerations to be employed in fixing compensation for professional services:

"(c) Factors in Allowing Compensation .
(1) General. The compensation allowable by the court to a trustee, receiver, marshal, attorney, accountant, or other person entitled to compensation for services rendered in the administration of a bankrupt estate shall be reasonable, and in making allowances the court shall give due consideration to the nature, extent, and value of the services rendered as well as to the conservation of the estate and the interests of creditors."

The Advisory Committee's Note to Rule 219 explains that:

"The premise for including in these rules provisions governing the allowance of compensation to officers, attorneys, and accountants is that it is peculiarly a judicial responsibility to supervise the administration of estates and in particular to assure that allowances for compensation to those rendering services in connection herewith are fair but not excessive."

Among the major factors which are to be considered in determining the value of legal services and the quantum of compensation are:

- 1) The necessity for spending the time claimed. (In re Charles Ray Glass, Inc., 47 F. Supp. 428 (S.D. Cal. 1942)).
- 2) Whether the services actually conferred a clear, measurable benefit on the estate. (Bass v. Quittner, Stutman & Treister, 381 F.2d 54 (9th Cir. 1967)).
- 3) The nature and complexity of the services rendered in view of the skill actually employed and the novelty and difficulty of the questions, issues and problems actually presented. (In re Farrington Manufacturing Co., 540 F.2d 653 (4th Cir. 1976)).
- 4) The economic spirit of the Bankruptcy Act. (Finn v. Childs Co., 181 F.2d 431 (2d Cir. 1950)).

In the appeal at bar, the primary factors which were considered by the Bankruptcy Court were the amount of time expended by Liebman Eulau and the time fairly required to render the necessary professional services. Having studied the time records reflected in the Kirschner affidavit (A24ff;33), the Bankruptcy Court concluded that some of the time expended by Liebman Eulau may have included duplication and overlapping of services. Therefore, the Bankruptcy Court concluded that the application for compensation included time beyond that necessarily required to discharge the engagement. In re Mabson Lumber Co., 394 F.2d 23, 25, Fn. 5 (2d Cir. 1968) (citing In re Hudson & Manhattan Railroad Co., 339 F.2d 114

(2d Cir. 1964), and In re Wal-Feld Co., 345 F.2d 676 (2d Cir. 1965)). Viewing Liebman Eulau's application for compensation in light of the applicable factors set forth above, it is manifest that the conclusion of the Bankruptcy Court was not clearly erroneous or an abuse of discretion.

C. The Applicable Principles of Appellate Review Mandate That The Award of Attorneys' Fees Not Be Disturbed

As a general principle, allowances of attorneys' fees by bankruptcy courts will not be disturbed on appeal unless a gross inequity has occurred, the allowances reflect a clear mistake of law, or result in an injustice. In re James Anthony & Co., 531 F.2d 658 (2d Cir. 1976); In re Howat, 278 F.2d 582, 583 (7th Cir.), cert. denied, 364 U.S. 887 (1960); In re Dunhill Suspender & Belt Corp., 162 F.Supp. 608, 611 (S.D.N.Y. 1958); In re Valentine, 139 F.Supp. 576 (D. Md. 1956). This is amply demonstrated by a series of recent decisions:

1. In re James Anthony & Co., 531 F.2d 658, 659 (2d Cir. 1976) [unless a "gross inequity" has been inflicted, the award made by the lower court will not be set aside];
2. In re First Colonial Corp. of America, 544 F.2d 1291, 1298 (5th Cir. 1977) ["District courts and bankruptcy judges have broad discretion in determining the amount of attorneys' fees to award as compensation for services performed in connection with bankruptcy proceedings, and their exercise of that discretion will not be disturbed by an appellate court absent a showing that it was abused"]

We are especially reluctant to interfere in this case since the bankruptcy judge and the district court are in agreement."];

3. In re York International Building, Inc., 527 F.2d 1061, 1068 (9th Cir. 1975) ["An appellate court will not interfere with [the lower court's] awards in the absence of a clear abuse of discretion or an erroneous application of the law."];
4. In re Farrington Manufacturing Co., 540 F.2d 653, 657 (4th Cir. 1976) ["The District Court in applying [the applicable] standards, is to be given broad discretion and that discretion 'is not to be interfered with short of a showing that it has been abused.'"]; and
5. SEC v. First Securities Co. of Chicago, 528 F.2d 449, 451 (7th Cir. 1976) ["Also, in such receiverships the awarding of fees rests in the judge's discretion, which will not be disturbed unless he has abused it. SEC v. Capital Counsellors, Inc., 512 F.2d 654, 658 (2d Cir. 1975)."]

The recent decision of this Court in In re James Anthony & Co., supra, demonstrates the criteria applied on appellate review of awards of attorneys' fees. In that case, the fees requested by the attorneys involved were reduced by approximately fifty percent (50%), notwithstanding the bankruptcy court's finding that the services rendered were of "extremely high quality. This Court affirmed the award of attorney's fees as reduced, stating:

"We find no such gross inequity in the results reached by the [Bankruptcy] Judge and the District Court as to call for any change by an appellate court." 531 F.2d at 659.

The record in the instant matter is devoid of any basis upon which a reasonable man would conclude that a reduction from approximately \$60,000 or \$80 per hour, to \$50,000 or \$65.88 per hour, constitutes gross inequity. Indeed, District Judge Duffy concluded that the award made by the Bankruptcy Court "may have been overly generous" (A94). In light of the applicable principles and the considered review by the lower courts, the award of attorneys' fees to Liebman Eulau is fair and reasonable.

CONCLUSION

The orders of the District Court should be affirmed in all respects.

WEIL, GOTSHAL & MANGES
Attorneys for Trustee-Appellee
767 Fifth Avenue
New York, New York 10022
758-7800

Of Counsel:

Harvey R. Miller,
William J. Rochelle, III.

April 4, 1977

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x

In re	:	
W. T. GRANT COMPANY,	:	Docket No.
	:	77-5001
Bankrupt,	:	
LIEBMAN, EULAU, ROBINSON & PERLMAN,	:	
Appellant,	:	
-against-	:	
CHARLES G. RODMAN, as Trustee of	:	
the Estate of W. T. Grant Company,	:	
Bankrupt,	:	
Appellee.	:	

-----x

CERTIFICATE OF SERVICE

I, William J. Rochelle, III, am associated with the firm Weil, Gotshal & Manges, attorneys for the appellee-trustee. I certify that on April 4, 1977, I served three copies of the brief of the appellee-trustee by mail upon Liebman, Eulau, Robinson & Perlman, appellant pro se, 32 East 57th Street, New York, New York 10022.

Dated: New York, New York
April 4, 1977


William J. Rochelle, III

Index No. 77-5001

Year 19

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

In re

W. T. GRANT COMPANY,

Bankrupt.

CERTIFICATE OF SERVICE

WEIL, GOTSHAL & MANGES
Attorneys for Trustee

767 FIFTH AVENUE
BOROUGH OF MANHATTAN, NEW YORK, N.Y. 10022
(212) 758-7800

To:

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated:

.....
Attorney(s) for

PLEASE TAKE NOTICE

☐ that the within is a (certified) true copy of a
NOTICE OF entered in the office of the clerk of the within named court on 19
ENTRY

☐ that an Order of which the within is a true copy will be presented for settlement to the Hon.
NOTICE OF one of the judges of the within named Court,
SETTLEMENT at
on 19 , at M.

Dated:

WEIL, GOTSHAL & MANGES
Attorneys for

767 FIFTH AVENUE
BOROUGH OF MANHATTAN, NEW YORK, N.Y. 10022

To:

Attorney(s) for

STATE OF NEW YORK, COUNTY OF

ss:

I, the undersigned, am an attorney admitted to practice in the courts of New York State, and

☐ certify that the annexed
has been compared by me with the original and found to be a true and complete copy thereof.

Check Applicable Box
Attorney's
Certification

Attorney's
Verification
by
Affirmation

☐ say that: I am the attorney of record, or of counsel with the attorney(s) of record, for
I have read the annexed

know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on
information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon
knowledge, is based upon the following:

The reason I make this affirmation instead of

is

I affirm that the foregoing statements are true under penalties of perjury.

Dated:

(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF

ss:

being sworn says: I am

☐ in the action herein: I have read the annexed
know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on
information and belief, and as to those matters I believe them to be true.

Check Applicable Box
Individual
Verification

Corporate
Verification

☐ the of
a corporation, one of the parties to the action: I have read the annexed
know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on
information and belief, and as to those matters I believe them to be true.

My belief, as to those matters therein not stated upon knowledge, is based upon the following:

Sworn to before me on

, 19

(Print signer's name below signature)

STATE OF NEW YORK, COUNTY OF

ss:

age and reside at

being sworn says: I am not a party to the action, am over 18 years of

On

, 19

, I served a true copy of the annexed
in the following manner:

Check Applicable Box
Service
By Mail

Personal
Service

☐ by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service
within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

☐ by delivering the same personally to the persons and at the addresses indicated below:

Sworn to before me on

, 19

(Print signer's name below signature)